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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1949~~ 1950

No. ~~251~~ 48

SAVANNAH SUGAR REFINING CORPORATION,
Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AMERICAN BARGE LINE COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

C. R. HILLYER,
Counsel for Appellant.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 49 C 1434

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, ET AL.,

Defendants

STATEMENT OF SAVANNAH SUGAR REFINING CORPORATION AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES ON APPEAL.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, intervening plaintiff, Savannah Sugar Refining Corporation, submits herewith its statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction upon appeal to review the final decree and order of the United States District Court entered herein on January 12, 1950. A petition for appeal is presented to the District Court herewith, to wit, on March 7th, 1950.

Statutes Conferring Jurisdiction

The jurisdiction of the Supreme Court of the United States to review by direct appeal the final decree and order of the District Court entered in this case is conferred by

Title 28, United States Code, sections 1253, 2101(b), 2284, and 2325, effective September 1, 1948, 62 Stat. 928, 962, 968, 970.

Cases Sustaining Jurisdiction

Interstate Commerce Commission v. *Mechling*, 330 U. S. 567; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282; *Ann Arbor R. Co.* v. *United States*, 281 U. S. 658; *United States* v. *New York Central R. R.*, 263 U. S. 603.

The case involves:

The Interstate Commerce Act, which opens with a declaration of national transportation policy to be followed in the administration of the act. Among other things, it calls for fair and impartial regulation of all modes of transportation subject to the act, to recognize and preserve the inherent advantages of each and to avoid unjust discriminations, undue preferences and unfair or destructive competitive practices.

Section 1 (1) (a) of the same act, 49 U. S. C. 1 (1) (a), which provides that it applies to traffic moving partly by water and partly by rail as well as to all-rail traffic.

Section 1 (5) (a), of the same act, 49 U. S. C. 1 (5) (a), which provides that all charges for transportation must be just and reasonable.

Section 3 (1), of the same act, 49 U. S. C. 3 (1), which prohibits undue preference of shippers, localities, ports, etc.

Sections 13 (1), of the same act, 49 U. S. C. 13 (1); 13 (2); 49 U. S. C. 13 (2); 14 (1) 49 U. S. C. 14 (1); and 15 (1) 49 U. S. C. 15 (1), which provide the procedure and machinery for investigations, hearings, etc. and for requiring the establishment and maintenance of rates found reasonable as maximum and/or minimum, non-preferential and otherwise lawful by the Interstate Commerce Commission.

Section 307 (d), of the same act, 49 U. S. C. 907 (d), which gives the Commission power to require through routes and reasonable joint rates partly by rail and partly by water, differentially lower than all-rail rates where justification is found.

Section 320 (e) of the same act, which repealed Section 3 (e) of the Inland Waterways Corporation Act, as amended by the so-called Denison Act, 45 Stat. 980, but continues in force rates prescribed prior to October 1, 1940, under the Inland Waterways Corporation Act.

Also involved is the Administrative Procedure Act (5 U. S. C. 1001).

Also involved is the Constitution, Article 1, Section 9, Clause 6, which provides that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

The Nature of the Case and the Rulings of the District Court

The case arose out of an order of the Interstate Commerce Commission in its Docket No. 26712, which was an investigation of existing rates for the through transportation of freight partly by rail and partly by barge from and to various points reached by barge-rail routes, these rates being differentially lower than the all-rail rates from and to the same points. For the most part the rates were those established over a period of years in purported conformity with orders of the Commission entered, without hearings, in various proceedings under Section 3 (e) of the Inland Waterways Corporation Act, as amended by the Denison Act, 45 Stat. 980. In the proceeding, entitled *Rail and Barge Joint Rates*, the Commission issued an original report, 270 I. C. C. 591, dated July 7, 1948, and a supplemental report, 274 I. C. C. 229, dated June 13, 1949. Therein it prescribed

a new system of differentials to be deducted from all-rail rates to make barge-rail rates in most of the territory involved and entered an order June 13, 1949, requiring that they be put into effect on or before November 1, 1949.

The Commission, in prescribing and ordering the rates in No. 26712, acted under authority purportedly contained in Section 307(d) of the Interstate Commerce Act, as amended, 49 U. S. C. 907 (d), which section, after giving the Commission power to require the establishment of joint rates for rail-water transportation, provides as follows:

> In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water.

The railroads contended that the Commission construed this provision as a statement of Congressional policy and a mandate to prescribe differentials in favor of rail-barge routes regardless of whether there were any demonstrable economies in the cost of service in favor of the rail-barge routes, and regardless of any other transportation circumstances or conditions. The record showed that the costs to the carriers were at least as great via rail-barge as via all-rail.

The Commission said in its original report that it could not find that there were demonstrable economies in the rail-barge service which would justify differentials and it appeared that the prescription of differentials rests solely upon the supposed Congressional mandate. The railroads felt that the Commission's construction of the law was in error and in violation of the National Transportation Policy stated in an introductory paragraph of the Interstate Commerce Act, and that the differentials were not "justified" by the evidence. On September 20, 1949, they

accordingly instituted this court action, alleging that the Commission's decision was arbitrary, capricious, unconstitutional and otherwise unlawful. Due to the pendency of this proceeding, the Commission postponed the effective date of its order from time to time. It now stands postponed until May 31, 1950.

The Savannah Sugar Refining Corporation intervened before the Interstate Commerce Commission supporting the railroads and asking similar relief, and has been an active party throughout the proceeding before the Commission and before the District Court. It is engaged in the refining of imported and domestic cane sugar at Port Wentworth, Georgia, adjacent to Savannah, Georgia. Its product, refined sugar, is transported by rail in carloads to consuming markets in all of the States of the Southeast, and also to destinations in states North of the Ohio river, covered by the order of the Interstate Commerce Commission here under attack, in competition with the movement of sugar at barge-rail rates from New Orleans.

During the course of the hearings before the Commission the Savannah refinery undertook by testimony and exhibits to show that to competitive markets to which Savannah shipped at rail rates from Savannah, the barge-rail rates from New Orleans should be no lower than the all-rail rates on sugar from New Orleans. That competition in the sale of sugar is exceedingly keen and that in this proceeding the volume of sugar moving from New Orleans via barge-rail routes is of outstanding importance.

That prescription of differentials in favor of joint rail-barge routes which are not justified by demonstrable economies in the rail-barge service gives to shippers of sugar who are in a position to ship via the rail-barge routes, an arbitrary and unfair advantage in reaching competitive markets, over intervener who is not in a position to use

rail-barge service but who does have available all-rail routes over which the traffic can be moved at a lesser cost than over the competing rail-barge routes. Thus shippers who have available to them the lower cost economical all-rail routes are deprived of this inherent advantage by the arbitrary rate differentials.

The all-rail rates on sugar in carloads from the refinery of this intervener located at Port Wentworth, Georgia, and the all-rail rates on sugar in carloads from competing refineries in the New Orleans district, to the markets involved in this proceeding are reasonable and lawful rates in and of themselves; and said all-rail rates from and to said points also have been fairly related the one to the other, and free from unjust discrimination, as required by the Interstate Commerce Act, for the respective transportation services for all-rail transportation. Therefore, arbitrarily lower differential rail-barge rates from the New Orleans District to said competitive markets, which are not justified by demonstrable economies in the rail-barge service or other transportation circumstances and conditions, result in unduly preferential rates to refiners located in the New Orleans district, and unlawful prejudice to this intervener which is forced to pay the higher all-rail rates, in violation of Section 3(1) of the Act to regulate Commerce; and results in relatively unreasonable and unlawful existing relationships between joint barge-rail rates and all-rail rates, and in unreasonably low rates, all in violation of Section 1 of said Act to regulate Commerce.

The decision of the Commission refers to Sugar traffic as of "outstanding importance." Thus, this intervener is the outstanding victim of the existing barge-rail differential rates. In absorbing the difference between the all-rail rates and the differential barge-rail rates, the cost to

intervener on shipments to three Southeastern states alone, up to the time of the hearing before the Commission, amounted to $464,133.00. The Commission states that its decision "shall not affect the present barge-rail rates on sugar." The order of the Commission provides that the reports are a part thereof. While this finding is negative in form it is affirmative in substance, and arbitrarily authorizes the continuation of differential barge-rail rates under a misconception of the provisions of the Transportation Act of 1940, as pointed out elsewhere herein.

New Questions of Great Substance and Importance Are Involved

Many new questions of law are presented by this case. The question of whether the Commission misconstrued the differential provision of Section 307(d) of the Interstate Commerce Act will no doubt affect the barge-rail rate structure for years to come. It is a matter of prime importance, because if barge-rail routes are required to perform wasteful transportation, the public as well as shippers not in position to use such routes will have to foot the bill. It is a matter of prime importance not only to the railroads which would have to give up much of the traffic and revenue to competing forms of transportation, but to the Savannah Sugar Refining Corporation in competition with New Orleans in reaching the markets served by the barge-rail routes.

For the New Orleans refiners to have an advantage over the Savannah refinery regardless of transportation conditions is a very serious matter.

Whether the inferior service of the barge-rail routes is justification for differentials, regardless of the relative cost of service, is a question of far-reaching effect.

The case is plainly one which affects the national transportation economy, as well as rights of individual shippers, localities and ports. The questions involved are substantial and important.

Respectfully submitted,

C. R. HILLYER,
Attorney for Intervening Complainant.

March 7, 1950.